(1) Supreme Court, U.S. FILED

05-857 OCT 17 2006

No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

Richard W. Madden, Sr.
Lori M. Madden
Tiera R. Madden
Amanda K. Madden

V.

Petitioners

Jessica L. Stewart
Gerri Ann Davis
Honea Path Police Department
Jimmy King, Attorney

Respondents

On Petition For Writ Of Certiorari
To The United States Appeals Court 4th Circuit
PETITION FOR WRIT OF CERTIORARI

Richard W. Madden, Sr.
Lori M. Madden
Tiera R. Madden
Amanda K. Madden
1720 Martin Rd
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QUESTIONS PRESENTED FOR REVIEW

This matter comes before the court by Pro Se petitioners, the petitioners filed an action in the United States Federal Court in the District of South Carolina Anderson Division. The petitioners filed an action citing several civil rights violations. Summary Judgment was granted in this action on two of the defendants on December 22, 2004.

Questions:

1. Should the petitioners in this case expected to be free from discrimination, threats, and intimidation, and also be guaranteed equal protection in the law under the XIV Amendment of the Constitution of the United States.
2. Should the petitioner in this case have expected to have an arrest warrant issued for his arrest only after the showing of probable cause.
3. Should the petitioner in this case have expected to use process to compel witness testimony in his defense in order to remove the level of probable cause under the VI Amendment of the Constitution of the United States.
4. Does the VI Amendment of the Constitution of the United States include the defendant being informed of why the charges of a crime that the defendant was arrested for committing was dismissed prior to trial before a jury.
5. Does the defendant in a criminal action have the right for his record to be completed.
6. Should the petitioner in this case have expected that their victims rights would be upheld when the petitioner was a victim of a crime.
7. Should one of the respondents in this case have recused himself from prosecuting one of the petitioners when it was

a conflict of interest for that respondent to prosecute and or make any judgmental decisions pertaining to the petitioner.
8. Should any judge in the lower district court made the decision on the outcome of this case without the benefit of a jury trial when one of the defendants in this case is a Marshall in the same court as the presiding judge.
9. Should the lower district court have better protected the best interest of the Pro Se litigants in this case.
10. Should the lower district court as well as the court of appeals have held the Pro Se litigants to a less stringent standard.
11. In a cause of action should the lower court address all items presented in a claim and apply the law to all claims.
12. In an appeal of a decision should the Appeals Court address all issues raised on appeal and apply the law to each issue.
13. Should orders and or judgments from the courts be signed by the issuing judge and bear the court stamp.
14. If a judge is quoted as making a recommendation on a case, should the documentation pertaining to that case state that judges name as the case being referred to that judge for review.
15. Should the United States Federal Court have exercised jurisdiction over two of the defendants in this case that was not granted Summary Judgment.
16. Should the petitioners in this case expect the Judges in the Court of Appeals that arefrom the state of South Carolina to recuse themselves from this case, as the petitioners requested when this case was filed for appeal.
17. Did the United States Federal District Court err in granting Summary Judgment in this case thus dismissing this cause of action.

18. Did the United States Court of Appeals err in affirming the decision of the lower district court.
19. Should the petitioners in this case have expected the right of jury trial to be preserved for them as guaranteed in the VII Amendment of the Costitution of the United States.

List Of All parties:
Richard W. Madden, Sr., Lori M. Madden, Tiera R. Madden, Amanda K. Madden.
Petitioners

Jessica L. Stewart, Gerri Ann Davis, Honea Path Police Department, Jimmy King, Atty.
Respondents

*** The parties listed in this case are not public held companies and have no parent companies.**

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CITATIONS OF OPINIONS AND ORDERS BY COURTS

1. Mandate from the United States Court of Appeals at Appendix A-1 dated August 3, 2005.

2. Denial of Rehearing and Rehearing En Banc from the United States Court of Appeals at Appendix A-2 dated July 26, 2005.

3. Unpublished Per Curiam Decision of the United States Court of Appeals affirming lower court at Appendix A-3 dated June 14, 2005.

4. Order from the Federal District Court granting Summary Judgment at Appendix A-7 dated December 22, 2004.

5. Report & Recommendations of the Magistrate Judge in the Federal District Court at Appendix A-15 dated October 22, 2004.

6. Report & Recommendations of the Magistrate Judge in the Federal District Court at Appendix A-25 dated August 25, 2004.

JURISDICTIONAL STATEMENT

1. The Order of the 4th Circuit Appeals Court denying Petition for Rehearing and Rehearing En Banc was filed on July 26, 2005.

2. The United States Supreme Court has Federal Jurisdiction in this matter pursuant to 28 U.S.C. Section 2101.

STATEMENTS OF MATERIAL FACTS

In January of 2000, the petitioners in this case started being harassed, stalked, and threatened relentlessly by Jessica Stewart one of the respondents in this case. Ms. Stewart is also the stepdaughter of David King who is the Chief of Police at the Honea Path Police Department, which is also a respondent in this case. On several occasions while harassing the petitioners Ms. Stewart was accompanied by Gerri Ann Davis another respondent in this case, Ms. Davis while in the presence of Ms. Stewart joined Ms. Stewart in harassing the petitioners.

Several attempts were made by the petitioners to have Ms. Stewart's harassment of them stopped by legal means, the petitioners went to the authorities at the Honea Path Police Department multiple times for help in this matter, the petitioners quest for assistance was met with resistance on the part of the Honea Path Police Department. In every instance except for one, the authorities at the Honea Path Police Department informed the petitioners that if one of their officers did not witness Ms. Stewart harass them then there was nothing that they could do about it.

On December 8, 2001, After having her life threatened by Ms. Stewart yet again, petitioner Amanda Madden went to the Honea Path Police Department and informed them that Ms. Stewart had threatened to kill her by putting a gun to her head. At this time the Honea Path Police Department

arrested Ms. Stewart for simple assault, for which Ms. Stewart plead guilty to. Ms. Stewart was released from custody the following day December 9, 2001.

On December 10, 2001, petitioners Richard Madden, Sr. and Amanda Madden were on their way to work in the town of Honea Path, South Carolina, when the petitioners stopped at a convenience store in Honea Path Ms. Stewart and Ms. Davis saw them and pulled into the parking lot where the petitioners were at and proceeded to harass the petitioners yet again. Ms. Stewart and Ms. Davis left the store lot before the petitioners. The petitioners left the store lot and proceeded to go to their respective jobs. Petitioners Richard Madden, Sr. and Lori Madden went to the Honea Path Police Department on the afternoon of December 10, 2001, to file another complaint about Ms. Stewart and Ms. Davis harassing petitioners Richard Madden, Sr and Amanda Madden.

While at the Honea Path Police Department petitioners Richard Madden, Sr. and Lori Madden were verbally abused by officer W. E. McCurry of the Honea Path Police Department and were forced to leave the premises of the Honea Path Police Department for their own protection.

On the evening of December 10, 2001, petitioner Richard Madden, Sr. was called at his place of employment by the Honea Path Police Department, at that time the petitioner was told that the officers needed more information from the petitioner pertaining to the petitioner being harassed by respondent Stewart, also the Honea Path Police Department asked the petitioner to either come to the police department now or later when the petitioner got off work. Petitioner Richard Madden, Sr. chose to go at that time to the police department ,upon arriving at the Honea Path Police

Department petitioner Richard Madden, Sr. was immediately placed under arrest for the offense of Reckless Driving. Petitioner Richard Madden, Sr. attempted to offer officers at the Honea Path Police Department alibi witnesses in his defense that would remove the level of probable cause, thus removing the arrest warrant, the officers at the Honea Path Police Department refused to listen to the petitioner or to his witnesses and proceeded with the arrest of Richard W. Madden, Sr.. A jury trial was requested and scheduled for March 20, 2002 in Honea Path, S. C:

During the trial proceedings the prosecuting attorney Jimmy King who is also a respondent in this case decided to dismiss this case. After the dismissal of this case the petitioner requested multiple times from the Honea Path Police Department and prosecuting Attorney Jimmy King the true factual and documented reason that these charges were abruptly dismissed. All requests for this information has proven futile, the petitioner has never been given a true documented understanding as to why the authorities decided to dismiss this charge, and also, the petitioner has not had his record completed properly and when the petitioner requested that his record be completed the respondents failed to comply.

In quoting part of the *XIV Amnendment of the Constitution of the United States, section 1,* " all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States, and no State shall deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws".

When these petitioners went to the Honea Path Police Department to seek out legal solutions to the problems that they were having with respondent Stewart harassing, threatening, and stalking them, the Honea Path Police Department did not respond properly to the petitioners, instead the Honea Path Police Department gave the appearance of protecting the stepdaughter of one of their own officers in failing to arrest respondent Stewart for her crimes against the petitioners. By these actions the respondent Honea Path Police Department has discriminated against the petitioners and did not grant the petitioners equal protection in the law.

Also, on December 10, 2001, the petitioners were verbally abused by officer W. E. McCurry of the Honea Path Police Department so much so that instead of completing their complaint of the harassment of them by respondents Stewart and Davis that these petitioners were forced to leave the police department for their own safety. In the Report of the magistrate judge dated October 22, 2004, the magistrate judge states that "fear or emotional injury which results solely from verbal harassment or idle threats is generally not sufficient to constitute an invasion of an identified liberty interest". The key word in this statement is "generally" which means "in most instances", the word generally does not mean in all cases, and the petitioners in this case were verbally abused by a person in authority wearing a weapon on his side and this same person was in a position to arrest the petitioners if they responded against his verbal abuse. This does not qualify this case to be dismissed based on the judge's assumption and reference from *42 U.S.C. 1983.* This Title only protects law enforcement officials acting within their scope and or

boundaries of authority, it is clearly not within the scope and or boundaries of a police officers authority to verbally abuse a private citizen seeking help from the officer. Also, conducting yourself in a boisterous manner in a public place is "public disorderly conduct" which is exactly what officer McCurry was doing. Further, it is a violation of the "Law Enforcement Code of Ethics" to act as officer McCurry did toward private citizens. *(see page 45 of 66 of entry number 58 on the district court docket)(see entry numbers 59 & 60 on the district court docket).*

Further, these petitioners were intimidated and threatened by the respondent Honea Path Police Department on March 16, 2002, when the Honea Path Police Department officers threatened to arrest any one in the petitioners family if the petitioners came to the Honea Path Police Department again seeking to file a complaint against respondent Stewart. To not be discriminatory against the petitioners, then the Honea Path Police Department would have to admit that they treat every person that they come in contact with, with threats of arrest and in favor of family members of their own officers. *S C Code 16-25-70(E)* states that "a law enforcement officer must not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement". *(see page 56 of 66 of entry number 58 on the district court docket).* Police officers are there to serve and protect, not to discriminate, threaten, intimidate, and verbally abuse citizens seeking help. Every person in the United States should expect to be free from discrimination, threats, and intimidation, and every person is guaranteed equal protection in the law under the *XIV Amendment of the United States Constitution.*

The *IV Amendment of the Constitution of the United States* prohibits unreasonable search and seizure and requires a showing of probable cause for the issuance of any search or arrest warrant. Only after the showing of probable cause should a person be arrested for a crime.

When respondent Stewart stated to police officers that petitioner Richard Madden, Sr. had attempted to strike her with his vehicle the officers had probable cause to arrest petitioner Richard Madden, Sr. However, once the officers noted and documented the time that respondent Stewart entered the police department and when she stated in a voluntary hand written signed under oath statement that the crime that she was alleging that petitioner Madden committed against her actually happened in her words at the very time that respondent Stewart was in the presence of the officers as indicated by the time an officer was dispatched to talk to Stewart on the incident report and it was apparent that the crime Stewart alleged against Madden did not happen as Stewart stated, then all probable cause did not exist and the arrest of petitioner Richard Madden, Sr. should not have taken place.

Petitioner Richard Madden, Sr. was arrested approximately 4 ½ to 5 hours after respondent Stewart gave this statement to officers and the officers had in their possession a conflicting statement from respondents Stewart and Davis that conflicted with the time that these 2 individuals were in the police department. *(see pages 40, 41, 42, & 47 of 66 of entry number 58 on the district court docket).*

The *VI Amendment of the Constitution of the United States*, "guarantees the right to use process to compel the attendance of witnesses for the defense". At the South Carolina Criminal Justice Academy, officers in training are

taught that " an alibi that can be easily checked out or other evidence favorable to the accused must be considered. If the inclusion of this additional evidence removes the level of probable cause, no arrest should be made"*(Jones v. City of Columbia, 301 S. C. 62, 389 S.E.2d 662)(SC 1990), (see page 47 of 66 of entry number 58 on the district court docket).* When respondent Richard Madden, Sr. was arrested, he attempted to give officers his alibi witnesses including his supervisor at the plant where he worked and where he was, at the time of the alleged reckless driving incident, to prove his innocence, also to prove that he was in another place at the time that the officers told Madden that the alleged crime took place. The officers refused to accept and verify all alibi witnesses and proceeded with the arrest of petitioner Richard Madden, Sr. *(affidavit of Vicki J. Fields entry number 46 on district court docket).*

The VI Amendment of the Constitution "guarantees criminal defendants the right to be informed of the charges against them", if a defendant who maintains his innocence the entire time after his arrest and employment of counsel up to and including the trial proceedings has the charges against him dismissed abruptly and without explanation, then that defendant should be informed of the reasons behind the dismissal in order to protect himself in the future, especially when the person that alleged that the defendant committed the crime has threatened to do whatever necessary to see the defendant, Richard Madden, Sr. behind bars.

In the report of the magistrate Judge dated October 22, 2004, Judge Hendricks states that the FOIA does not impose a duty on officials to convert mental knowledge into written form. Judge Hendricks does not quote any

statute stating that the officials of the defendant (respondent) Honea Path Police Department do not have to explain why the charge was dismissed, nor, does Judge Hendricks quote any statute stating that the same officials do not have to properly fill out all documents pertaining to the arrest of an individual. The failure to properly fill out all documents pertaining to the arrest of petitioner Richard Madden, Sr. is discrimination and not equal protection in the law. To not be discriminatory the defendant Honea Path Police Department would have to admit that they do not fill out all documents properly on every arrest that this department makes. *(see page 35 of 49 of entry number 82 on the district court docket).*

Petitioner Richard Madden, Sr.'s, attorney informed him in front of 4 witnesses that the reason that the charges against him were dismissed was that the authorities at the Honea Path Police Department had seen that it was revenge on the part of Stewart and Davis. *(see entry numbers 59 - 63 affidavits of the petitioners & affidavit of Richard Madden, Jr. on the district court docket).* When reviewing the documented evidence the documents show that Stewart and Davis were lying about the incident of alleged reckless driving. The Honea Path Police Department authorities upon finding out that Stewart and Davis lied about Richard Madden, Sr.'s actions, the authorities would not arrest Stewart and Davis for giving false information to authorities. This shows a complete attempt to cover up Stewart and Davis' crime and discrimination against the petitioners when the Honea Path Police Department arrested petitioner Richard Madden, Sr. when Stewart made allegations against Madden, yet the officers would not arrest Stewart the step-daughter of the chief of police and

Davis the niece of a Honea Path Town Council member. This does not give the petitioner equal protection in the law.

On the back of the arrest warrant for Reckless Driving of petitioner Richard Madden, Sr. there is an area for the disposition of the case and a place to indicate jury trial, bench trial, plea, nol pros, etc. In the space for the disposition the authorities at Honea Path Municipal Court typed in dismissed, in the space to indicate how the disposition was reached, the Authorities type in ETC., etc in no way explains how a disposition was reached, etc simply means to go on, and so forth. Therefore this record of the petitioner is not completed. When the petitioner requested that his record be completed properly, his request was denied. *(see page 35 of 49 of entry number 82 on the district court docket).*

As a victim of a crime in the state of South Carolina, a victim has the right to be informed of any post-conviction proceedings, including hearings and sentencing including an alternative sentence. Also, a victim has the right to a reasonable disposition and prompt and final conclusion of the case. When petitioner Amanda Madden became the victim of a crime at the hands of respondent Jessica Stewart. Petitioner Amanda Madden requested from the Honea Path Police Department on May 6, 2003, a copy of the court's disposition of the arrest warrant on Jessica Stewart for simple assault. The Honea Path Police Department responded to Amanda Madden's request on May 7, 2003. It cannot be sheer coincidence that the date that SLED states that they received the disposition is the very day that the Honea Path Police Department responded to Petitioner Amanda Madden's " Freedom Of Information

Act" request. *(see appendix H and appendix I).* Petitioner Amanda Madden was not informed of an alternative sentencing hearing for Jessica Stewart, and also, the authorities of the Honea Path Municiple Court did not turn in the disposition of the arrest of Jessica Stewart to be placed on her South Carolina arrest record until it had been 514 days after the disposition of the case, as of now the disposition does not appear on Stewart's FBI record. This does not give the victim a prompt and final conclusion to the case. As guaranteed in the *Victim Rights Notification. (see page 42 of 49 of entry number 82 on the district court docket), (see pages 37,38,59, & 60 of 66 in entry number 58 on the district court docket), (see pages 45, 46, 47 of 49 entry number 82 on the district court docket).*

According to the *South Carolina Bar Association rules of conduct rule 1.9 conflict of interest*, an attorney should not represent a client whose interests is materially adverse to those of a former client, unless the attorney informs the former client. Attorney Jimmy King was an Attorney in the law firm that petitioner Richard Madden, Sr. employed when petitioner Madden was charged with criminal negligence that resulted in the death of respondent Stewart's father in the year of 1994, as indicated on the letterhead of " Chapman, King & Byrholdt Law Firm", this letterhead was submitted to the court. *(see page 29 of 30 of entry number 42 on the district court docket).* When a law firm is retained by an individual all attorneys in the law firm have been retained and have access to and may at some point work on all cases within the law firm. In prosecuting petitioner Richard Madden, Sr. in the municipality of Honea Path where petitioner Madden, Sr. was accused of attempting to strike respondent Stewart

with his vehicle, respondent attorney Jimmy King did not identify himself to petitioner Richard Madden, Sr., or the court that respondent attorney Jimmy King was in fact a former attorney of petitioner Richard Madden, Sr. when Madden was charged in conection with the death of respondent Stewart's father. This is a direct conflict of interest on the part of respondent attorney Jimmy King. Respondent King should have identified himself to the court and to the petitioner and recused himself from the case.

The petitioners in this case notified the District Court and informed them that one of the main defendants on behalf of the respondent the Honea Path Police Department is W. E. "Steve" Hanks who is the former chief of police at the Honea Path Police Department and was the current chief at the time that the violations against the petitioners took place. Mr. Hanks is now a Federal Marshall in the United States District Court Anderson Division. The petitioners presented to the court their concerns about a conflict of interest by any judge in this District Court making a decision on the case with out allowing the case to be presented to a fair, impartial jury. The petitioners expressed concerns that due to his connections in the Dis[illegible]t Court and the influential people that Mr. Hanks comes in contact with on a daily basis including Judges, that Mr. Hanks could very possibly use these connections to persuade the deciding judge to find in favor of the respondents the Honea Path Police Department, and by doing this it would protect Mr. Hanks and his former co-workers at the Honea Path Police Department. Based on this information, the court should have allowed the case to be presented to a jury so that the petitioners could receive an unbiased decision.

The petitioners in this case firmly believe that the District Court did not protect the best interest of the Pro Se litigants and the court appeared to be partial toward the defendants rather than the Pro Se plaintiffs. The scheduling order that was issued at the beginning of this case was ordered by Judge Herlong, Judge Herlong was later replaced by Judge Harwell. When the petitioners were notified that another judge was taking over the case, the petitioners questioned the court about proceeding with the scheduling order. The petitioners were informed by the clerk's office at the District Court to proceed as outlined in the scheduling order from Judge Herlong. In the scheduling order, the petitioners were notified to be ready for jury selection and commencement of trial on September 7, 2004. In preparing for the trial the petitioners attempted to meet with the defendants to mark exhibits as ordered in the scheduling order. The petitioners received a letter from the attorneys for the defendants the Honea Path Police Department and Attorney Jimmy King, informing the petitioners that they (the above defendants) had been advised by the clerk at the District Court that this case would not be on the trial roster for the week of September 7, 2004. *(see Appendix J).* The petitioners were never notified by the District Court clerk's office to not appear in court ready for trial on September 7, 2004. Nowhere on the court docket does it show any record of the clerk's office notifying the petitioners to not appear in court. Yet, the defendants were notified to not appear. As the plaintiffs in this case, the petitioners should have been notified of any change in the scheduling order, yet, the District Court only notified the party that was represented by counsel. This is not in the best intertest of the Pro Se litigants. Having not

been notified to not appear, the petitioners did appear ready for trial in court on September 7, 2004 as scheduled whereas none of the defendants appeared not even the defendants who were poceeding Pro Se themselves. The petitioners contacted the District Court about the defendants not appearing for court on September 7, 2004, and questioned the court about defaulting on the no show defendants. A failure to show in court as ordered results in a judgment on the party that does not appear, as the petitioners and respondents were proceeding on a scheduling order that required them to be in court on September 7, 2004, then the court should have found judgment against the defendants. Further, the petitioners notified the District Court on 3 separate occasions that the petitioners did not receive the report and recommendations of the magistrate judge that was dated October 22, 2004, the petitioners had to read about the report of the magistrate judge in the local newspaper. The petitioners did not receive the report of the magistrate judge in the mail until January 19, 2005. Prior to the District Court Judge making his decision for summary judgment on December 22, 2004, the District Court did not after being notified 3 times that the petitioners had not received the report of the magistrate judge make any effort whatsoever to insure that the petitioners received and fully understood the report of the magistrate judge and what the consequences of a failure to properly respond to the report of the magistrate judge would be. For the reasons above the best interest of the Pro Se litigants were not protected by the District Court. *(see entry number 84 on the district court docket, see Appendix K).*

The United States Supreme Court held in *{Haines v.*

*Kerner, 404 U. S. 519, 92 S.Ct.594, 30 L.Ed 2d 652}*and also in *{Estelle v. Gamble, 29 U. S. 97, 97 S. Ct. 285, 50 L.Ed.2d 251}*, that Pro Se allegations however inartfully pleaded that we cannot say with assurance that under the allegations of the Pro Se complaint which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears" beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to releif." For the reasons above the District Court should have held the Pro Se litigants to less stringent standards than pleadings drafted by lawyers. The District Court Judge could not say with assurance or beyond a doubt that the petitioners did not offer evidence to support their claim and that a reasonable jury would not find in favor of the plaintiffs. For the District Court to grant summary judgment based on these facts, then the judge is presuming to anticipate what a reasonable person would do in the position of juror, no person can say with assurance what another person will or will not do without first questioning that person and presenting the facts to that person.

When the petitioners filed the original claim in the District Court the petitioners stated 11 claims against the defendants in the claim. The petitioners told the court what claims they were making against the defendants and then proved to the court by submitting material evidence that the defendants had committed the violations that the petitioners stated to the court. Neither the magistrate judge nor the district judge acknowledge every claim that the petitioners filed the action for. Every claim should have been addressed by the district court and the law applied to each and every claim. Further, the district court asked the

petitioners to state exactly what they wanted the court to do for them, in their relief, the petitioners first asked for justice, and for a relief settlement and the amount to be decided on by a fair and impartial jury. And for the district court to not address the entire claim before dismissing the claim is a failure on the court's behalf to apply justice to the claim, irregardless of who the victor turned out to be. In stating that one of the claims should be dismissed that does not mean that all of the claims should have been dismissed unless the court has applied the law to the claims. In order to guarantee the petitioners equal protection in the law, the district court should have addressed each claim while applying the law to it.

When the petitioners filed this case in Appeals Court, the petitioners listed 10 issues on appeal. The Appeals court did not address the issues and apply the law to the issues raised on appeal. The appeals court merely stated that for the reasons stated by the district court that the court of appeals affirms the decision. This was affirmed by unpublished per curiam opinion. In failing to not address all issues presented to the appeals court, then the appeals court has failed to uphold the *XIV Amendment of the Constitution of the United States* in guaranteeing equal protection in the law. The petitioners have shown the courts that they were not given equal protection in the law previously, and every available remedy or course of action should have been taken by the district court and the appeals court to not repeat the injustices that the petitioners had already endured within the legal judicial system.

The petitioners received the unpublished per curiam opinion of the United States Court of Appeals via the United States Postal Service, upon receiving this document

the petitioners found that this document does not bear the signature of the deciding Justices nor does it bear the stamp of the court, nor does it bear a file date anywhere on this document. The petitioners received the denial for the petition for rehearing and rehearing en banc via the United States Postal Service, upon receiving this document the petitioners found that this document does not bear the signature of the deciding justices, nor does it bear the stamp of the court. In the previous proceedings in the District court, every document that the petitioners received from the court bears the stamp of the court and file date as well as the signature of the judge. In order to be a legal and binding document should the documents from the court of appeals bear the same?

In the order granting summary judgment, district court Judge Harwell states that he is adopting the report and recommendation of magistrate Judge Howe, the petitioners have not received any documentation from the district court to indicate that this case was being looked at by a Magistrate Judge Howe, further the petitioners do not have any reports or other documents presented by a Magistrate Judge Howe. The petitioners do not know who magistrate Judge Howe is. In order to quote the report of a Magistrate Judge, there should be on file the very report that you are quoting from including the name and signature of that very judge who is making the report. In actuality, Judge Harwell is quoting from a report that does not exist.

The district court declined to exercise supplemental jurisdiction over the state law claims over defendants Stewart and Davis. Stewart and Davis are responsible for the petitioners federally protected constitutional rights being violated. When the petitioners filed this case it was

referred to a magistrate judge for consideration prior to issuing the order to serve the summons. Pursuant to the provisions of *Title 28 United States Code, Section 636 (b) (1)(A) and Local Civil Rule 73.02 (B)(2)(e)dsc*, all pretrial matters in cases involving pro se litigants are referred to a United States Magistrate Judge for consideration. United States Magistrate Judge Bruce H. Hendricks considered this case and deemed this case worthy of having the summons issued and to proceed with the action. When filing this case, the petitioners told the court exactly what they would show the court against these 2 individuals, and in the course of this case, the petitioners did prove to the court their claims against defendants Stewart and Davis. In answering the complaint, defendants Stewart and Davis demanded strict proof of any adverse allegations against them. *(see entry numbers 14 & # 15 on the district court docket).* Defendants Stewart and Davis never filed another item in the court pertaining to this case except for entering the 26 (f) report and agree to conference and scheduling order and the consent to trial by magistrate. The magistrate judge in ordering the issuance of the summons was exercising jurisdiction over these 2 defendants, now the court is deciding not to exercise jurisdiction over these defendants. If the court was not going to exercise jurisdiction over these defendants, then the court should not have allowed the summons to be served on Stewart and Davis and allow the plaintiffs to proceed with their case against Stewart and Davis. If Stewart and Davis had not have harassed, threatened, & stalked the petitioners and not have given false information to the Honea Path Police Department that resulted in the arrest of petitioner Richard W. Madden, Sr. then the petitioners would not have had any reason to be in

the presence of the Honea Path Police Department and would not have suffered the violations of deprivation of liberty, discrimination, and failure of receiving equal protection in the law. Therefore, Stewart and Davis are just as responsible as all the other respondents in this case and should be held accountable as such.

When the petitioners filed this case in the Appeals Court, the petitioners filed a letter along with the brief requesting "that due to the nature of this case and the high profile individuals involved in this case, that the Pro se appellants feel that it would be in our best interest if at all possible if this appeal was not assigned to a judge from the state of South Carolina". *(see Appendix D).* The petitioners made this request due to the fact that one of the main defendants for the respondents Honea Path Police Department is a federal marshall in the federal court system. However, when the petitioners received the opinion of the Appeals Court the petitioners found that the Senior Judge Hamilton is from the state of South Carolina. Every opportunity should be taken to give petitioners especially Pro Se petitioners a fair and just chance within the judicial system especially when petitioners show that their Constitutional rights have been violated previously by the judicial system. When the petitioners filed this action in the federal district court, the petitioners simply stated that this case was a violation of civil rights, *(see # 1 on the district court docket),* the magistrate judge quotes this case as being pursuant to *Title 18* and the District Court Judge quotes this case as being pursuant to *Title 42,* exactly what Title is this case pursuant to, the Magistrate Judge could quote pursuant to a specific Title that would entitle the defendants to summary judgment, and then the District Court Judge could

quote pursuant to a completely different Title in granting summary judgment. These two judges need to be quoting pursuant to the same Title in order to keep the facts of this case and all applicable laws the same. Since the plaintiffs did not specify a Title that this case was pursuant to, Anything that the judge states that is not actionable under a specific Title could have been quoted in an effort to make the defendants the prevailing party because of who the defendants are, people who work in the judicial systems just like the judges. Citing *Anderson v. Liberty Lobby, Inc. 477 U. S. 242, (1986),* the Supreme Court directed that in determining a motion for summary judgment under Rule 56: " the judge must ask, not whether the evidence unmistakably favors one side or the other but whether a fair minded jury could return a verdict for the plaintiff on the evidence presented. The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a prepondernce of the evidence that the plaintiff is entitled to a verdict, whether there is (evidence) upon which a jury can proceed to find a verdict for the party producing it." " Summary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. At the summary judgment stage, the trial judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is genuine issue for trial. There is no such issue unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. In Essence, the

inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law". "The evidence of the nonmoving party is to be believed, and all justifiable inferences are to be drawn in his favor".

In the Order Granting Summary Judgment, District Court Judge Harwell states " that the plaintiffs allege that Corporal W. E. McMurry verbally abused them on December 10, 2001, when they went to the Police Department to give a statement regarding Stewart's alleged harassment of Richard Madden that morning." This statement is completely false, first it was officer W. E. McCurry that the plaintiffs stated that verbally abused them and it was not on that morning that the plaintiffs state that Stewart harassed Richard Madden, it was in fact the same afternoon just 30 minutes prior to Stewart going to the Police Department and claiming that Richard Madden had attempted to hit her with his truck, that Jessica Stewart harassed Richard Madden. These same statements are also found in the Report of the Magistrate Judge dated October 22, 2004. The Order Granting Summary Judgment also lists plaintiff Richard Madden, Sr. as a defendant instead of the plaintiff.

Prior to the District Court Judge Harwell's granting of summary judgment in favor of the respondents who is known as the movant for summary judgment, as the nonmoving party for summary judgment, the petitioners did present to the lower District Court in excess of 40 pages of factual material evidence to prove to the court that the nonmoving party did indeed have more than a mere scintilla of factual material evidence that the case should be presented to a jury rather than a decision by a judge. *(see*

entry number 82 on the district court docket).

The mere stating that a moving party did or did not do something that is alleged in the claim is not evidence enough to require granting of summary judgment to the moving party. The moving party must present evidence to coroborate their claims of " I did, or I did not".

When the moving party presented to the court the affidavit of T. B. Moon of the Honea Path Police Department. T. B. Moon states in his affidavit in paragraph 6 that "T. B. Moon spoke with Richard W. Madden, Sr. to "get his side of the story", and also that as reflected by the supplemental incident report Mr. Madden acknowledged he was at the Little General parking lot at the same time as Jessica Leigh Stewart". In paragraph 9 of the same affidavit T. B. Moon states " After Mr. Madden was arrested, that he spoke with Amanda Madden and as reflected in the attached incident report she had some knowledge of the incident although no information had been given to her by the Honea Path Police Department". In paragraph 10 of the same affidavit, T. B. Moon states " that he spoke with Al Brock on the evening of December 10, 2001. At that time Mr. Brock did not provide the undersigned with any relevant information regarding the incident or the reckless driving charge". If officer Moon did indeed talk to Al Brock on the evening of December 10, 2001, then that conversation should be reflected on the supplemental incident report. *(see page 48 of 66 in entry number 58 on the district court docket).* In paragraph 13 of the same affidavit, T. B. Moon states, " the he did not verbally abuse, curse at , or in the presence of act anyway unprofessional toward Richard W. Madden, Sr., or Lori Madden. That he was present the entire time Mr. And Mrs. Madden were at

the Police Department on December 10, 2001 or the early morning hours of December 11, 2001". *(see entry number50, Moon affidavit on the district court docket).*

The nonmoving party did present to the court that T. B. Moon attempts to use "his recollection" of what T. B. Moon states that Amanda Madden said when T. B. Moon "alleges" that he spoke with Amanda Madden as probable cause for the arrest of Richard W. Madden, Sr. At the time that T. B. Moon "alleges" that he spoke with Amanda Madden it was after the arrest of Richard W. Madden, Sr. as was presented in Moon's affidavit. However, probable cause must exist at the time of the arrest, an officer is not to make an arrest, then attempt to gather probable cause.

These are merely statements of " I did or I did not", the affidavit in no way represents factual material evidence on the part of the moving party. The moving party could not present to the court signed statements of Richard W. Madden, Sr., Amanda Madden, or Al Brock to prove that these individuals were in fact interviewed by T. B. Moon. Also, the moving party could not present to the court the interview log that South Carolina's State Law Enforcement Division requires that must be maintained when officers interview a subject, as listed on the supplemental incident report the Honea Path Police Department listed Richard W. Madden, Sr. as a subject. *(see pages 49 & 50 of entry number 58 on the district court docket).* The moving party could not and did not present to the court any statement of denial of officer W. E. McCurry whom the nonmoving party stated that verbally abused them, not T. B. Moon.

The nonmoving party did present to the court an affidavit of Richard W. Madden, Sr. that stated " that he and his wife were never in the presence of T. B. Moon

during the afternoon of December10, 2001". *(see entry number 42 Richard Madden, Sr. affidavit & entry number 59 Richard Madden, Sr. affidavit on the district court docket).*

The nonmoving party did present to the court an affidavit of Amanda Madden that states " that no officer of the Honea Path Police Department interviewed her concerning the incident at the Little General Store or the alleged reckless driving incident. That when she asked to give a statement that officers of the Honea Path Police Department told her that they didn't need her statement and that she could tell it to the judge in the morning". *(see entry number 62 Amanda Madden affidavit on the district court docket).*

The nonmoving party did present to the court an affidavit of Al Brock in which he states, "that neither T. B. Moon or any other officer of the Honea Path Police Department interviewed him concerning any actions of Richard W. Madden, Sr.. That he attempted to give a statement to officers but was told that they did not need his statement and he could tell it to the judge in the morning". *(see entry number 64 Al Brock affidavit on the district court docket).*

The nonmoving party did present to the court the voluntary statements of Jessica L. Stewart and Gerri Ann Davis that shows that Officer T. B. Moon was in the presence of these 2 individuals from the time of 15:45 until 17:19, on the day of December 10, 2001 and these statements prove that T. B. Moon was not in fact in the presence of Richard W. Madden, Sr., and Lori Madden when they were in the Honea Path Police Department on the day of December 10, 2001 at the time of 16:15 when officer W. E. McCurry verbally abused them. It appears

that based on his statement and the actual material evidence presented that T. B. Moon did in fact perjure himself to the district court in his affidavit. *(see pages 40, 41 & 42 of entry number58 on the district court docket).*

The nonmoving party did present to the court that the Honea Path Police Department officers did threaten the petitioners with arrest for requesting legal intervention of the harassment of the petitioners by respondent Jessica Stewart on March 16, 2002. The nonmoving party did present to the court that on March 16, 2002, the Honea Path Police Department officers did not arrest Jessica Stewart when Stewart was in complete violation of a restraining order that was placed against Stewart by petitioner Amanda Madden. *The South Carolina Code of Laws Section 16-3-1800* states " that law enforcement shall arrest a defendant who is acting in violation of a restraining order after service and notice of the order have been provided. An arrest warrant is not required". *(see pages 52, 54, & 55 of entry number 58 on the district court docket).* This shows the court another violation of not giving the petitioners equal protection in the law. *(see entry number 60, Lori Madden affidavit, entry number 61, Tiera Madden affidavit & entry number 62, Amanda Madden affidavit on the district court docket).*

In the Report of the Magistrate Judge dated October 22, 2004, Judge Hendricks states that the allegations of the plaintiffs regarding the alleged discrimination of the plaintiffs on March 16, 2002 fail to state a constitutional deprivation by the Police Department. Judge Hendricks implies that this decision was reached because the parties agree that on March 12, 2002, Chief Hanks told the plaintiffs that any additional incidents between the

Maddens and Stewart would have to be handled by the Anderson County Sheriff's Department. The discrimination of the plaintiffs however comes in when on March 14, 2002 and March 15, 2002, the Honea Path Police Department handled an incident on each day on behalf of Jessica Stewart instead of calling the Anderson County Sheriff's Department as agreed on March 12, 2002. *(see pages 53 & 65 of 66 in entry number 58 on the district court docket).* If the Honea Path Police Department handled the incidents on behalf of Stewart after deciding that they would not handle any incidents after the day of March 12, 2002, then the Honea Path Police Department should have handled the incidents for the Maddens on March 16, 2002. Yet, on March 16, 2002, when the Anderson County Sheriff's Department did come to the Honea Path Police Department to handle this incident it was the officers of the Honea Path Police Department who did all of the talking and handling this incident even going so far as officer Bill Brock who handled this incident telling Stewart how much he loved her like she was his own daughter, this is definitely a conflict of interest and discrimination toward the petitioners. This does show a constitutional deprivation toward the petitioners and does not give the petitioners equal protection in the law. *(see entry numbers 61 & 62 Tiera Madden affidavit & Amanda Madden affidavit on the district court docket).*

The moving party did present to the court an affidavit of Brenda Cunningham who states in paragraph 5 of her affidavit " that sometime after January 8, 2002, she forwarded the final disposition form to SLED which charge, disposition and sentence are confirmed by the attached arrest record of Jessica Leigh Stewart. *(see entry*

number 50 Brenda Cunningham affidavit on the district court docket).

The nonmoving party did present to the court that although Brenda Cunningham did send the disposition into SLED, that as indicated by the Date Record Entered information from SLED that it took 514 days for her to forward the disposition to SLED. And the date of last update on Jessica Leigh Stewart's arrest record confirms the information on the Date Record Entered as being May 7, 2003. This is not a prompt and final conclusion to the case of which Amanda Madden was a victim of a crime and is in violation of her victim's rights. *(see pages 59 & 60 of 66 in entry number 58 on the district court docket).*

The nonmoving party did present to the court allegations of malicious prosecution on the part of the officers of the Honea Path Police Department based on the fact that petitioners Richard W. Madden, Sr. and Lori Madden did file a complaint with the then Chief of Police at the Honea Path Police Department W. S. "Steve" Hanks, this complaint was that officer Michael Burns allowed the Madden's then underage daughter Amanda Madden to consume alcohol in his home.

The nonmoving party did show the court that officer Michael Burns should not have investigated anything involving the petitioners due to a conflict of interest based on the allegations of the petitioners against officer Burns. *(see page 46 of 66 of entry number 58 on the district court docket).*

The nonmoving party did show the court that petitioner Lori Madden was detained by officers of the Honea Path Police Department in a locked room for approximately 20 minutes on the day of March 16, 2002, without the benefit

of an arrest warrant, this is a deprivation of liberty. *(see entry numbers 60, 61, & 62, Lori Madden affidavit, Tiera Madden affidavit, Amanda Madden affidavit on the district court docket).*

The nonmoving party did show the court that under U. S. C. 1983, that a police officer is not to be granted immunity if the officer steps outside of his scope of authority. When an officer violates another person's constitutional rights then that officer has step outside of the scope of his authority. *Title 42 U. S. C. 1983* provides in relevant part that: "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State.. Subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution... Shall be liable to the party injured".

If the District Court was merely going to take the word of one party over the other rather than rely on factual material evidence to make the decision in granting summary judgment, then the court should have found in favor of the nonmoving party and not have granted summary judgment because after all in *Anderson v. Liberty Lobby, Inc. {477 US 242, 266},* the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in the favor of the nonmovant".

Based on the reasons indicated above the District Court did err in granting summary judgment to the respondents. Because the District Court did not apply the law correctly to this case in deciding summary judgement and the United States Court of Appeals affirmed this decision, then the United States Court of Appeals did err in affirming

the decision of the District Court.
If the court system fails to allow this case to be presented in a court in front of a jury. Then, by omission of the right to a jury trial, the court system is sending a message to the citizens of the United States and to law enforcement officials, and that message is that no matter what constitutional rights law enforcement officials violate against individuals or no matter what crimes or color of law violations that law enforcement officials violate against individuals, that as law enforcement officials they are above the law and will not be held accountable for their actions. Throughout the entire process of this case the petitioners have argued and requested that this case in any stage be decided by a jury as the Constitution declares is the petitioners right. Also, the defendants when answering the claim requested a jury trial, and you will notice on the docket that it states " jury trial demanded both". The VII *Amendment of the Costitution of the United States* preserves for litigants in civil damage actions in the federal courts the common law right of jury trial. If the judge is to be the deciding factor on whether or not to grant summary judgment, then the judge is presuming to believe what another person would do if presented with the facts. If you were in a court room and another person such as a witness presumed to believe what another person would do, the judge would not allow that testimony, more over the judge would state that the witness is being presumptuous. This is exactly what a judge is doing when they decide on summary judgment rather than allow a case to go to a jury. In granting the moving party summary judgment the court has furthered denied the nonmoving party "the non-lawyer Pro Se litigants" the equal protection of the laws and denial

of due process, and granting summary judgment is clearly the product of bias and prejudice of the court. Quoting from *{Anderson v. Liberty Lobby, Inc. 477 US 242}*, " If the judge on motion for summary judgment really is to weigh the evidence, then grave concerns are raised concerning the constitutional right of civil litigants to a jury trial".

REASONS FOR GRANTING THE WRIT

This matter is precisely as stated in Rule of the United States Supreme Court 10 (b), where a court of last resort has decided an important federal question in a way that conflicts with the decision of the United States Supreme Court.

It is clear from Anderson v. Liberty Lobby, Inc. that the United States Supreme Court held that the evidence of the nonmoving party is to be belived and all justifiable inferences are to drawn in his favor. It is also clear from Haines v. Kerner and Estelle v. Gamble that the United States Supreme Court held that Pro Se litigants however in artfully pleaded are to be held to less stringent standards than formal pleadings drafted by lawyers.

This is in fact what the Federal District Court failed to apply to this case in Granting Summary Judgment to the defendants in this case. And this is in fact what the 4th Circuit Court of Appeals failed to apply to this case in affirming the lower court's decision and denying the petition for rehearing and rehearing en banc.

For all the foregoing reasons, Petitioners respectfully urge this court to grant their Petition for Writ of Certiorari.

/s/Richard W. Madden, Sr.
/s/Tiera R. Madden
Pro Se Petitioners

/s/Lori M. Madden
/s/Amanda K. Madden
Pro Se Petitioners

NOTICE OF ISSUANCE OF MANDATE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
August 3, 2005

MANDATE

To: Clerk, District Court/Agency
From: Margaret F. Thomas
Deputy Clerk

RE: 05-1100 Madden v. Stewart
CA-03-3458-27-8

HEREWITH IS THE MANDATE OF THIS COURT, ISSUED THIS DATE, ON THE JUDGMENT ENTERED BY THE COURT ON 6/14/05.

[ ] Order and Certified Copy of Judgment
[x] Opinion and Certified Copy of Judgment
[ ] Order on Costs
[ ] Order dismissing appeal R42 (b) of Local Rule 45
[ ] Other:_____
[ ] The record has been retained for use in case number___

cc: Richard W. Madden, Sr.
Lori M. Madden
Tiera R. Madden
Amanda K. Madden
Jessica L. Stewart
Gerri Ann Davis
James Victor McDade
John Michael O'Rourke

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
July 26, 2005

No. 05-1100
CA-03-3458-27-8

RICHARD W. MADDEN, SR.; LORI M. MADDEN; TIERA R. MADDEN; AMANDA K. MADDEN
Plaintiffs - Appellants

v.

JESSICA L. STEWART; GERRI ANN DAVIS; HONEA PATH POLICE DEPARTMENT; JIMMY KING
Defendants - Appellees

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this court. As no member of this court or the panel requested a poll on the petition for rehearing en banc, and As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

Entered for a panel composed of Judge Wilkinson, Judge Gregory, and Senior Judge Hamilton.

For the Court,

/s/ Patricia S. Connor

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-1100

RICHARD W. MADDEN, SR; LORI M. MADDEN; TIERA R. MADDEN; AMANDA K. MADDEN
Plaintiffs - Appellants

Versus

JESSICA L. STEWART; GERRI ANN DAVIS; HONEA PATH POLICE DEPARTMENT; JIMMY KING
Defendants - Appellees

Appeal from the United States District Court for the District of South Carolina, at Anderson. R. Bryan Harwell, District Judge. (CA-03-3458-27-8)

Submitted: May 27, 2005 Decided: June 14, 2005

Before WILKINSON, and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Richard W. Madden, Sr., Lori M. Madden, Tiera R. Madden, Amanda k. Madden, Appellants Pro Se. James Victor McDade, John Michael O'Rourke, Tate & McDade, PA, Anderson, South Carolina, for Appellees Honea Path Police Department and Jimmy King.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36 (c).

PER CURIAM:

Richard W. Madden, Sr., Lori M. Madden, Tiera R. Madden, and Amanda K. Madden appeal the district court's order adopting the recommendations of the magistrate judge and dismissing their action under 42 U. S. C. 1983 (2000). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See Madden v. Stewart, No.CA-03-3458-27-8 (D. S. C. Dec. 22, 2004). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials beore the court and argument would not aid the decisional process.

AFFIRMED

February 15, 2005

To: Clerk
U. S. Court of Appeals, Fourth Circuit
U. S. Courthouse Annex, 5th Floor
1100 East Main Street
Richmond, Virginia 23219

Re: 05-1100 Madden v. Stewart

Dear Sir or Madam;

Due to the nature of this case and the high profile individuals involved in this case, we, the pro se appellants feel that it would be in our best interest if at all possible I this appeal was not assigned to a judge from the state of South Carolina.
Thank you in advance for your attention to this matter.

Best Regards,

Richard W. Madden, Sr.
Lori M. Madden
Tiera R. Madden
Amanda K. Madden

1720 Martin Rd.
Honea Path, S. C. 29654

/s/Richard W. Madden, Sr.
Richard W. Madden, Sr.

/s/Lori M. Madden
Lori M. Madden

/s/Tiera R. Madden
Tiera R. Madden

/s/Amanda K. Madden
Amanda K. Madden

FILED

DEC 22 2004
Larry W. Propes, CLERK
U.S. DISTRICT COURT
ENTERED
DEC 22 2004

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Civil Action No.: 8:03-3458-27

ORDER GRANTING SUMMARY JUDGMENT

Richard W. Madden, Sr., Lori M. Madden,)
Tiera R. Madden, Amanda K. Madden)
Plaintiffs)
Jessica L. Stewart, Gerri Ann Davis)
Honea Path Police Department, Jimmy)
King, Atty.,)
Defendants)
)

In this matter, the plaintiffs filed an action pursuant to 42 U. S. C. 1983 alleging that defendant Jimmy King violated the Freedom of Information Act in failing to provide plaintiffs, in writing, with the reasons why charges against him were dropped. And that defendant Honea Path Police Department "did discriminate against them and did not treat them equally and fairly." Plaintiffs also name several

individual defendants in their complaint. Defendant Jimmy King filed a motion for summary judgment and supporting memorandum on May 19, 2004. Defendant Honea Path Police Department filed a motion for summary judgment on July 12, 2004.

This matter is now before the undersigned for review of the Report and Recommendations ("the Report") filed by United States Magistrate Bruce H. Hendricks on August 25, and October 22, 2004, to whom this case had previously been assigned to pursuant to 28 U. S. C. 636 and Local Rule 73.02 (B)(2)(g). In her Reports, Magistrate Judge Howe carefully considers these issues and recommends that the defendants' motions for summary judgment be granted with regard to defendants King and the Honea Path Police Department. Plaintiffs filed objections to the Report concerning defendant Madden's motion for summary judgment on August 30, 2004 and defendant Honea Path Police Department's motion for summary judgment on November 9, 2004.

In conducting this review, the Court applies the following standard:

> The magistrate judge makes only a recommendation to the Court, to which any party may file written objections....The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of thise portions of the report or specified findings or recommendation as to which an objection is made.

However, the Court is not required to review, under a *de novo* or any other standard, the factual report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.
Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137 (D. S. C. 1992) (citations omitted)

On November 5, 2004, plaintiffs filed for oral argument. Pursuant to Local Civil Rule of Procedure 7.08 all motions may be determined without a hearing and it is the judge's discretion whether or not to have a hearing. This court does not feel that oral argument is necessary to determine the motions presently before it.

Defendant Jimmy King

Plaintiffs raise several objections to the Report regarding King's motion for summary judgment. First, the plaintiffs take issue with the magistrate Judge's reference to "a long running feud with Defendant Jessica L. Stewart". Second, plaintiffs contend that it was Mr. King who decided to dismiss the case, it was not, as the report states, a decision made by Mr. King and the Honea Path Police Department. The court notes the plaintiffs objections. However, the court determines that these objections do not change the outcome of this motion.

Third, plaintiffs contend that the warrant for reckless driving and Mr. King's statement incourt that he decided to dismiss the charges are a public record. They allege that they are merely asking Mr. King to complete the record that was already created by answering the question as to why

the case was dismissed. After several Freedom of Information Act ("FOIA") requests by plaintiff Richard W. Madden, Sr. concerning the dismissal of the charge against him, Mr. King provided him with all documents in his file and the Town of Honea Path's file. Additionally, Mr. King noted that there was no written documentation as to the reasons why the charges had been dismissed; however, he did state the dimissal was a result of interviews with witnesses and discussions with Richard W. Madden, Sr.'s attorney. Subsequently, on may 14, 2003, plaintiff Richard W. Madden, Sr. wrote Mr. King and asked him to put "the reasons the charges against [him] were dropped in writing" based on the contention that Mr. King was " in mental, if not written posession as to why these charges were dismissed and asked Mr. King to "convert the mental knowledge of this dismissal into written form." (King Affidavit, Ex. D.) The FOIA provides: " any person has a right to inspect or copy any public record of any public body." S. C. Code Ann. 30-4-30 (a) (Law Co-op. 1976). "Public record" is defined as "all books, psper, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in posession of, or retained by a public body", S. C. Code Ann. 30-4-20 (c) (Law Co-op 1976). Plaintiffs appear to contend only that King did not create a written record of his mental knowledge. This is not required by the FOIA. *See Affiliated Construction Trades Foundatiion v. Regional Jail and Correctional Facility Authority,* 490 S.E.2d 708, 711 (W. Va. 1997).

Fourth, plaintiffs allege that Mr. King should have dismissed the charges prior to the day in court that they were dismissed and that he should have prosecuted

defendant Jessica Stewart for her role in charges being brought against plaintiff Richard W. Madden, Sr. This issue was not alleged in plaintiffs' complaint and, therefore, is not properly before this court for its consideration. The only claim made against Mr. King in the complaint is that he "refused on numerous occasions to give [Richard] Madden information as to why the charges of reckless driving against him were dismissed." (complaint IX).

Finally, plaintiffs contend that if Mr. King is now arguing that he is not the proper defendant because he is a private lawyer and not covered by the FOIA then he should not have responded to the FOIA request. Mr. King is the prosecuting attorney for the Town of Honea Path. Under the FOIA there is no private right of action against a private attorney who represents a municipality for damages. While Mr. King, as attorney for Honea Path, could be designated to receive, review, and respond to the FOIA requests, any causes of action brought as a result of the FOIA would make the public body, not the individual attorney, liable. Mr. King is not a proper defendant to the allegations asserted by the plaintiffs against him.

I find as a matter of law that there are no issuses of material fact and as a matter of law defendant King is entitled to summary judgment.

Defendant Honea Path Police Department

Plaintiffs objections to the Report regarding the Honea Path Police Department's mption for summary judgment attempt to reargue the motion for summary judgment and do not allege specific objections to Magistrate Judge's Report. Specific objections are necessary to focus the

court's attention on disputed issues. *See Thomas v. Arn,* 474,U.S, 140,147-48 (1985). Because general objections to a magistrate judge's report do not direct the court's attention to any specific portion of the report , they are tantamount to a failure to object. *See Howard v. Secretary of Health & Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991); *see also Orpiano v. Johnson,* 687 F.2d 44, 47 (4th Cir. 1982). Further, the court agrees with the Magistrate Judge that the plaintiff has failed to allege or offer any evidence sufficient to establish a claim pursuant to 42 U.S.C. 1983 as to the Honea Path Police Department.

Under *Monell v. Department of Social Services,* 436, U.S. 658,691 (1978). A local government entity may not be held liable for an act of its employee under a *respondent superior* theory. The plaintiffs here have failed to allege or offer any evidence of an official government policy or custom resulting in injury to them with regard to their claim.

Plaintiffs next allege that the Police Department discriminated against them on March 16, 2002, when officers refused to take a report regarding an incident involving Stewart. However, even veiwing the evidence in a light most favorable to the plaintiffs, their allegations fail to state a constitutional deprivation by the Police Department.

The plaintiffs additionally allege that Corporal W. E. McMurry verbally abused them on December 10, 2001, when they went to the Police Departemnt to give a statement regarding Stewart's alleged harassment of Richard Madden that morning. The plaintiff's allegations of verbal harassment by McMurry, taken as true, do not constitute the violation of any federally protected right. *See*

Aziz Zarif Shabazz v. Pico, 994 F.Supp. 460, 474 (S.D. N.Y. 1998) (noting that "verbal harassment or profanity alone, 'unaccompanied by any injury no matter how inappropriate, unprofessional, or reprehensible it might seem,' does not constitute the violation of any federally protected right and therefore is not actionable under 42 U. S. C. 1983). *See also, Pittsley v. Warish,* 927 F.2d 3, 7 (1st Cir.1991) ("fear or emotional injury which results solely from verbal harassment or idle threats is generally not sufficient to constitute an invasion of an identified liberty interest.").

Finally, plaintiff Richard Madden alleges that the defendants "violated his right to be informed" by refusing to give him information as to why the reckless driving charge against him was dismissed. The defendants have provided the plaintiffs with their complete files on the charges against Richard Madden. The FOIA does not impose a duty on the Police Department's officials to convert mental knowledge about the dismissal of the charge into written form. *See Affiliated Construction Trades Foundation v. Regional Jail and Correctional Facility Authority,* 490 S. E. 2d 707, 711 (W. Va. 1997). Accordingly, this claim is without merit.

This court finds that oral argument is not necessary and, therefore, plaintiffs' motion for oral argument is **DENIED.** For the foregoing reasons the undersigned adopts the report and recommendation of the magistrate, overrules all objections, **GRANTS** the defendant King's motion for summary judgment, and **GRANTS** the defendant Honea Path Police Department's motion for summary judgment. Furthermore, the court declines to exercis supplemental jurisdiction over the state law claims of the plaintiffs

against defendants Stewart and Davis under *28 U. S.C.1367 (c)*. As a result, this case is **DISMISSED**. This court expresses no opinion on the merits of the plaintiff's case against those remaining defendants or the timeliness of the plaintiff's action should they choose to immediately refile their case in state court against Stewart and Davis.
AND IT IS SO ORDERED.

/s/ R. Bryan Harwell
R. Bryan Harwell
United States District Court Judge

December 20, 2004
Florence, South Carolina

FILED
OCT 22 2004
LARRY W PROPES, CLERK
U.S. DISTRICT COURT
ENTERED OCT 22 2004

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRCIT OF SOUTH CAROLINA
ANDERSON DIVISION

Richard W. Madden, Sr.,
Lori M. Madden,
Tiera R. Madden,
Amanda K. Madden,

Plaintiffs

Vs.

Jessica L. Stewart,
Gerri Ann Davis,
Honea Path Police Department,
Jimmy King, Atty.,

Defendants

Civil Action No. 8:03-3458-27BI

REPORT OF MAGISTRATE JUDGE

This matter is before the court on the motion of defendant Honea Path Police Department ("the police department" or "defendant") for summary judgment, pursuant to Federal Rule of Civil Procedure 56. In their complaint, the plaintiffs, who are proceeding pro se, seek releif pursuant to Title 18, United States Code, Section 1983 and allege that defendant Honea Path Police Department ("Police Department") "did discriminate against them and did not treat them equally and fairly" (comp. XI). The plaintiffs also name several individual defendants in their complaint.

Pursuant to the provisions of *Title 28, United States Code, Section 636(b)(1)(A) and Local Civil Rule 73.02(B)(2)(e) DSC*, all pretrial matters in cases involving pro se litigants are referred to a United States Magistrate Judge for consideration.

The police department filed for summary judgment on July 12, 2004. By order filed July 13, 2004, pursuant to *Roseboro v. Garrison, 528 F. 2d 309 (4th Cir. 1975)*, the plaintiffs were advised of the summary judgment dismissal procedure and the possible consequences if they failed to adequately respond to the motion. The plaintiffs filed a response in oppisition to the motion for summary judgment an August 13, 2004.

FACTS PRESENTED

This case arises out of events that took place in Honea Path, South Carolina. The plaintiffs, who are all members of the Madden family, have been engaged in a long-running feud with defendant Jessica Stewart. Apparently, the

problems between the two families began when plaintiff Richard W. Madden, Sr. was involved in a hunting accident that resulted in Stewart's father's death (pl. resp.m.s.j. at 32).

On December 10, 2001, defendants Stewart and Gerri Ann Davis gave affidavits to the police department in which they stated that plaintiff Richard tried to hit Stewart with his truck (T. B. Moon aff. Ex. B). T. B. Moon, a former officer with the police department, investigated the incident. As part of his investigation, Moon spoke with Stewart, Richard, the manager of the store where part of the incident allegedly occurred, the cashier of the store, and Honea Path Patrolman Lisa Ritter. Moon filled out the affidavit on the arrest warrant and went before Summary Court Jufge John Ashley, who issued an arrest warrant for the offense of reckless driving (Moon aff. Ex. A). Plaintiff Richard was arrested on the evening of December 10, 2001 (Richard aff. 40). According to the incident report, Stewart stated that Richard tried to hit her with his truck on Main Street in Honea Path, and she went to the police department to report the incident. Ritter stated that while she and Stewart were standing in front of the police department, she observed a white pickup coming toward them on Main Street (Moon aff. Ex.B).

Defendant Jimmy King, as part of his duties as prosecuting attorney for the Town of Honea Path, prosecuted the reckless driving charge against plaintiff Richard. On March 12, 2002, the plaintiffs went to the jury selection for Richard's trial on the reckless driving charge. W. S. Hanks, the former Chief of the police department, met with the plaintiffs and told them that due to the appearance of a possible conflict (then Lieutenant David

King is the step-father of defendant Stewart) any additional incidents between the parties would be handled through the Anderson County Sherriff's department (Hanks aff. 7; Richard Madden aff. 49). According to Richard, Hanks srared that if a life threatening or emergency situation should occur, the police department "stood ready to handle the situation" (Richard Madden aff.49). Hanks made arrangements with the Sherriff's department to respond to and handle any incidents involving Stewart and the plaintiffs. Notification of the arrangement was given to all Police Department personnel by memorandum dated March 17, 2002 (Hanks aff.8, ex. B). Written notice of the arrangement was also confirmed to the plaintiff Richard by letter dated January 13, 2003 from Hanks and the Mayor of Honea Path (Hanks aff.9, ex. C).

On March 20, 2002, Richard's trial date, the charge against Richard was dismissed (Richard Madden aff.53). Richard stated in his affidavit that he wanted he trial to go forward so that he could prove that Stewart and Davis were lying (Richard Madden aff. 52).

Plaintiff Richard wrote the Police Department requesting information pursuant to the Freedom of Information Act ("FOIA") as to reasons why the charges of reckless driving against him had been dismissed. Hanks testified in his affidavit that by letter dated January 27, 2003, he sent Richard all the records covered by the FOIA request that were in the possession of the Police Department (Hanks aff. 10-11, ex. D). Pursuant to another request by Richard, defendant King, on April 30, 2003, provided Richard with all documents in his file and the Town of Honea Path's file (King aff. 7-8). In the April 30th letter, King noted that the documents had been previously provided to Richard by the

Honea Path Police Department in response to his request in January 2003. King noted that there was no written documentation as to why the charges against Richard had been dismissed. King stated that the dismissal was the result of his interviews with witnesses and discussions with Richard's attorney (King aff., ex. C). Defendant King responded to another request from the plaintiffs on May 22, 2003, stating that he had complied with Richard's FOIA request and that all documents had been provided. King further noted that the material had been provided to Richard on more than one occasion before April 30th. King stated in the letter that Richard's "continued request for [him] to convert [his] 'mental knowledge' into 'written form' is beyond the scope of the Freedom of Information Act" (King aff., ex. E).

APPLICABLE LAW

Federal Rule of Civil Procedure 56 (c) states, as to a party who has moved for summary judgment:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Accordingly, to prevail on a motion for summary judgment, the movant must demonstrate that: (1) there is no genuine

issue as to any material fact; and (2) that he is entitled to judgment as a matter of law. As to the first of these determinations, a fact is deemed "material" if proof of its existence or non-existence would affect disposition of the case under applicable law. *Anderson v. Liberty Lobby, Inc., 477 U. S. 242, 248 (1986).* An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. Id. at 257. In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc., 369 U. S. 654, 655 (1962).*

The party seeking summary judgment shoulders the initial burden of demonstrating to the district court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett, 47 U. S. 317, 323 (1986).* Once the movant ahs made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. Rather, the non-moving party must demonstrate that specific, material facts exist which give rise to a genuine issue. Id.at 324. Under this standard, the existence of a mere scintilla of evidence in support of the plaintiff's position is insufficient to withstand the summary judgment motion. *Anderson, 477 U. S. at 252.* Likewise, conclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. *Ross v. Communications Satellite Corp., 759 F.2d 355, 365 (4th Cir. 1985).* " Only disputes over the facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson,*

477 U. S. at 248.

Furthermore, Rule 56 (e) provides in pertinent part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed.R.Civ.P.56(e). Accordingly, when Rule 56(e) has shifted the burden of proof to the non-movant, he must produce existence of every element essential to his action that he bears the burden of adducing at a trial on the merits.

ANALYSIS

The plaintiffs allege that officer T. B. Moon gave false information to the summary court judge who issued the arrest warrant for Richard on December 10, 2001 (comp.2). Under *Monell v. Department off Social Services, 436 U. S. 658, 691(1978),* a local government entity may not be held liable for the acts of its employees under a respondeat superior theory. The plaintiffs here have failed to allege or offer any evidence of an official government policy resulting in injury to them with regard to the above claim (pl. resp.m.s.j. at 1-7). Based on the foregoing, the Police Department is entitled to summary judgment. Had officer Moon been named as a defendant, he would have absolute immunity from the plaintiffs' claim for damages on this

claim under Section 1983. See *Briscoe v. LaHue, 460 U. S. 325, 327-346 (1983); and Lyles v. Sparks, 79 F.3d 372, 378 (4th Cir.1996)* (finding that government official was entitled to absolute immunity from claim against him based on his testimony before the Grand Jury). The plaintiffs also allege that officers refused to "accept and verify [Richard's] alibi. . ." (comp.IV). Again, the Police Department is entitled to summary judgment for the reasons set fort above.

The plaintiffs next allege that the Police Department discriminated against them on March 16, 2002 when officers refused to take a report regarding an incident invovlins Stewart (comp.V-VIII). The parties agree that on March 12, 2002, Chief Hanks told the plaintiffs that any additional incidents between the Maddens and Stewart would need to be handled through the Anderson County Sheriff's Department (Hankaff.7, Richard Madden aff. 49). According to the affidavits of plaintiffs Amanda and Tiera, on March 16, 2002, "Stewart and a bunch of people were chasing them in atruck" (Amanda Madden aff. 23). Amanda and Tiera wentto the Police Department and were told by the police officers that the Sheriff's Department would need to handle the complaint. The officers called the Sheriff's Department and placed Amanda and Tiera in a back room until a deputy could arrive (Tiera Madden aff. 6). Viewing the evidence in a light most favorable to the plaintiffs, their allegations fail to state a constitutional deprivation by the Police Department.

The plaintiffs claim that Corporal W. E. McMurry verbally abused them on December 10, 2001, when they went to the Police Department to give a statement regarding Stewart's alleged harassment of Richard that morning. Specifically, the plaintiffs allege that McMurry told them "

What kind of damn hell fool would it make me look like if I sent it into SLED that Jessica Stewart shot you a birdie?" (Richard Madden aff.23). According to plaintiff Lori, when she went to the Police Department later that day and asked to see Richard, who had already been arrested, McMurry yelled and cursed at her, asking her, " Where the hell do you think you are going?"(Lori Madden aff. 24-28). The plaintiffs' allegations of verbal harassment by McMurry, taken as true, do not constitute the violation of any federally protected right. See *Aziz Zarif Shabazz v. Pico, 994 F. Supp. 460, 474(S.D.N.Y.1998)* (noting that "verbal harassment or profanity alone, 'unaccompanied by any injury no matter how inappropriate, unprofessional, or eprehensible it might seem,' does not constitute the violation of any federally protected right and therefore is not actionable under 42 U.S.C. 1983."). See also *Pittsley v. Warish, 927 F.2d 3,7 (1st Cir.1991)* (Fear or emotional injury which results solely from verbal harassment or idle threats is generally not sufficient to constitute an invasion of an identified liberty interest.").

Plaintiff Richard also alleges in the complaint that the defendants "violated his right to be informed" by refusing to give him information as to why the charge against him was dismissed (comp.IX). As set forth above, the defendants have provided the plaintiffs with their comlete files on the charge against Richard. The FOIA does not impose a duty on the Police Department's officials to convert mental knowledge about the dismissal of the charge into written form. See *Affiliated Construction Trades Foundation v. Regional Jail and Correctional Facility Authority, 490 S.E.2d 708, 711 (W. Va. 1997).* Accordingly, this claim is without merit.

Wherefore, based upon the foregoing, the Police Department's motion for summary jusgment should be granted. Further, the court should decline to exercise supplemental jurisdiction over the plaintiffs' remaining state law claims against defendants Stewart and Davis. See *28 U.S.C. 1367 (c)*. The plaintiffs' motion for subpoenas will be held in abeyance pending the district court's disposition of the motion for summary judgment. Should the District Judge adopt this court's recommendation, the motion will be rendered moot.

IT IS SO RECOMMENDED.

/s/ Bruce H. Hendricks
BRUCE H. HENDRICKS
UNITED STATES MAGISTRATE JUDGE

October 22, 2004
Greenville, South Carolina

FILED
AUG 25 2004
Larry W. Propes, Clerk
U. S. District Court
ENTERED AUG 25 2004

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Civil Action No. 8:03-3458-27BI

Richard W. Madden, Sr., Lori M.
Madden, Tiera R. Madden,
Amanda K. Madden,

Plaintiffs

vs.

Jessica L. Stewart, Gerri Ann Davis,
Honea Path Police Department,
Jimmy King, Atty.,

Defendants

REPORT OF MAGISTRATE JUDGE

This matter is before the court on the motion of

defendant Jimmy King (" King" or "defendant") for summary judgment, pursuant to Federal Rule of Civil Procedure 56. In their complaint, the plaintiffs, who are proceeding pro se, sek releif pursuant to Title 18, United States Code, Section 1983 and allege that defendant Honea Path Police Department "did discriminate against them and did not treat them equally and fairly"(comp. XI). The plaintiffs also name several individual defendants, including King, in their complaint.

Pursuant to the provisions of *Title 28, United States Code, Section 636(b)(1)(A) and Local Civil Rule 73.02(B)(2)(e)dsc*, all pretrial matters in cases involving pro se litigants are referred to a United States Magistrate for consideration.

This case arises out of events that took place in Honea Path, South Carolina. The plaintiffs, who are all members of the Madden family, have been engaged in a long-running feud with defendant Jessica l. Stewart. Apparently, the problems between the two families began when plaintiff Richard W. Madden, Sr. was involved in a hunting accident that resulted in Stewart's father's death (pl. resp. m.s.j., ex. B). On December 10, 2001, the defendants Stewart and Gerri Ann Davis gave affidavits to the Honea Path Police Department in which they stated that plaintiff Richard tried to hit Stewart with his truck. On that same date, plaintiff Richard was arrested for reckless driving. Defendant King, as part of his duties as prosecuting attorney for the Town of Honea Path, prosecuted the reckless driving charge against plaintiff Richard. According to King, on March 20, 2002, after interviewing witnesses and discussing the case with

Richard's attorney, Bruce Byrholdt, the decision was made in conjunction with the Honea Path Police Department to dismiss the charge (def.m.s.j., ex. A, King aff.5-6).

Plaintiff Richard wrote King on several occasions requesting information pursuant to the Freedom of Information Act ("FOIA") about the dismissal of the charge against him. According to King, on April 30, 2003, he provided Richard with all documents in his file and the Town of Honea Path's file (King aff 7-8). In the April 30th letter, King noted that the documents had been previously provided to Richard by the Honea Path Police Department in response to his request on January 27, 2003. King noted that there was no written documentation as to the reasons why the charges against Richard had been dismissed. However, King stated that the dismissal was the result of his interviews with witnesses and discussions with Richard's attorney (King aff., ex. C). on May 14, 2003, plaintiff Richard wrote King again acknowledging receipt of the documents and asking that King put " the reason the charges against [him] were dropped in writing (King aff., ex. D). Richard contended that King was "in mental, if not written posession as to why these charges were dismissed" and asked that King "convert the mental knowledge of this dismissal into written form" (King aff., ex. D). Defendant King responded to this letter on May 22, 2003, stating that he had complied with Richard's FOIA request and that all documents had been provided. King further noted that the material had been provided to Richard on more than one occasion before April 30th . King stated in the letter that Richard's "continued request for [him] to convert [his] 'mental knowledge' into 'written form' is beyond the scope

of the Freedom of Information Act" (King aff., ex. E).

The plaintiffs' only allegation that relates to King is set forth in paragraph IX of their complaint, in which they allege that King "refused on numerous occasions to give [Richard] Madden information as to why the charges of reckless driving against him were dismissed" (comp.IX). The plaintiffs allege that Richard requested the information multiple times under the FOIA. In their prayer for releif, in addition to damages, the plaintiffs' request "written documentation stating truthfully why the charges of reckless driving against Richard W. Madden, Sr., was[sic] dismissed" (comp. 5).

In his motion for summary judgment, defendant King first argues that he has complied with any duty he had to provide the information to Richard pursuant to the South Carolina FOIA. The FOIA provides in pertinent part: " Any person has the right to inspect or copy any public record of any public body,....." *S. C. Code Ann. 30-4-30* (a) (Law. *Co-op. 1976).* "Public record" is defined as "all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in posession of, or retained by a public body." Id.30-4-20 (c). As set forth above, King testified that he provided Richard with copies of his and the Town of Honea Path's entire files regarding the charge at issue. The plaintiffs do not appear to contest this and contend only that King did not create a record by converting his mental knowledge about the dismissal into written form. The FOIA imposes no such duty. *See Affiliated Construction Trades Foundation v. Regional Jail*

and Correctional Facility Authority, 490 S. E.2d 708, 711 (W. Va. 1997). Further, King is not an appropriate defendant to the allegations asserted by the plaintiff. See *S. C. Code Ann. 30-4-20* (a) (defining "public body").

Wherefore, based on the foregoing, defendant King's motion for summary judgment should be granted.

IT IS SO RECOMMENDED.

/s/ Bruce H. Hendricks

BRUCE H. HENDRICKS
UNITED STATES MAGISTRATE JUDGE

August 24, 2004

Greenville, South Carolina

May 6, 2003

To Whom it may concern; Honea Path Police Department

I am requesting under " The Freedom of Information Act" a copy of the court's disposition of a warrant on Jessica Stewart for simple assault. I (Amanda Madden) was the victim of this assaualt.

Warrant # G 130292

Arrest Date: 12/08/01

Thank You,

/s/ Amanda K. Madden

Amanda K. Madden

Honea Path Police Department
30 N. Main Street
Honea Path, SC 29654

W. S. "STEVE" HANKS, Chief
369-0532

May 7, 2003

Amanda K. Madden
1720 Madden Road
Honea Path, SC 29654

Attention: Amanda K. Madden

RE: Jessica Stewart/Warrant No. G - 130292

Per your request under "Freedom of Information Act" enclosed is the following document, Copy of Arrest Warrant No. G - 130292, see reverse side for Court Disposition. Also enclosed is a copy of the letter you submitted on May 6, 2003 requesting information.

/s/B. Cunnigham
Lt. B. Cunningham
Records Division
Honea Path PD

CC: Chief David King
Jimmy R. King, Attorney of Law
Mayor Earl L. Meyers

DOYLE, O'ROURKE, TATE & MCDADE, P. A.
Attorneys at Law
P. O. Box 2125
Anderson, South Carolina
29622

August 31, 2004

Mr. Richard w. Madden, Sr.
1720 Martin Rd.
Honea Path, SC 29654

Mrs. Lori Madden
1720 Martin Rd
Honea Path, SC 29654

IN RE: Madden vs. Stewart, et.al.
Dear Mr. And Mrs. Madden:

We have been advised by the Docket Clerk for Federal Court in Greenville that this case will not be on the trial roster for the week of September 7, 2004. I therefore do not believe that we need to, at this time, schedule a meeting to mark exhibits. If you wishto confirm this with the court the name of the Docket Clerk is Jackie Thomas and her number is 864-241-2751.

Best Regards,

Sincerely,
DOYLE, O'ROURKE, TATE & MCDADE,P.A.
"/ s/ John M. O'Rourke"

JMO/jw
Enclosure

cc: Mr. Jimmy King
Chief David King

Richard W. Madden, Sr.
Lori M. Madden
1720 Martin Rd.
Honea Path, S. C. 29654
(864)-369-2206

February 8, 2005

To: Postal Inspection Service
P. O. Box 1796
Columbia, S. C. 29202- 1796

Dear Sir or Madam;

Enclosed you will find a complaint firm along with other documents pertaining to our complaint that our mail has been tampered with.
On 10/31/2003 our family filed a lawsuit in Federal Court in Greenville, S. C. against the Honea Path Police Department, Jimmy King, Jessica Stewart, and Gerri Ann Davis. The main police officer that this action is against is former officer T. B. Moon.
In the days following 10/22/2004, we were to receive 4 individual letters from the Federal Court House in Greenville,S. C.
We did not receive these letters until January 19, 2005.
Our mail carrier is and has been since September, 2004, Sheila Vest, who is the above mentioned officer T. B. Moon's first cousin.
We had contacted the Federal Court House several times

about us not receiving these letters, the Court System maintains that these letters were mailed out to us in October, 2004.

When we did receive these 4 letters on 01/19/05, we immediately called the Court System again to make sure that these letters had not been returned to them & then re-mailed, the Court System said that the only time that these letters were mailed to us was in October, 2004.

We have spoken with an employee at the Honea Path post office, Kalena Kelly, several times aboutus not receiving these letters, her response was that they must have gotten lost.

We have voiced concerns to the post master that we feel that someone within the Honea Path post office with a connection to someone involved in this case tampered with our mail in an effort to prevent us from receiving these letters.

Receiving these letters ultimately represented the outcome of our case, in these letters was a court order that we had to respond to in 10 days of the date of the order or we would run the risk of our case being dismissed, our case was dismissed on Decmeber 22, 2004, and we did not receive our letters until 01/19/05.

Mail carrier Sheila Vest stated that these letters were in an abandoned mailbox that she "decided" to check and found these letters, our problem with this is that the "abandoned" mailbox that she is talking about does not even have resedence at it and there has not been a residence there since December 2003.

As our mail carrier why would you put mail in a mailbox that has not received mail in 11 months, and why would you decide to go to an abandoned mailbox that you know

has not received mail in 11 months, and then 3 months later go back to an abandoned mailbox again without having mail to deliver to that mailbox or without a pickup flag up on the box requesting a carrier to stop.
The mailbox that Sheila Vest claims that our mail was in has the name Alewine on it, while ours has MADDEN 1720 on it, we have received our mail at this address for 14 years and have never had this kind of problem.
There is no way that our mail had been in that mailbox out in the elements for 3 months because when we got it our mail was in perfect condition.
The post master came down & checked out the "abandoned " mailbox and removed some sales papers that were wet & discolored, if our mail had been in the same box it too would have been wet.
The post master allowed the removal of this mailbox 01/20/05 by relatives of the people who used to have a residence there.
We have appealed our case and it is still in the court system.
We firmly believe that because Sheila Vest was our carrier at the time of the disappearance and at the time of the reappearance of our mail, and due to the fact that she is the first cousin of one of the officers that we have an action against that it is possible that she withheld our mail from us, and used the "abandoned" mailbox as an excusable hiding place for our mail.
We did contact the Abbeville Sheriffs Department who questioned Ms. Vest, however the statement could not be released to us without a subpoena.
Based on the above paragraph we do not feel safe with Sheila Vest as our mail carrier while this case is in the court

system, and we request that she be removed from being our mail carrier and if it is proven that someone whoever they are deliberately tampered with our mail we will proceed with criminal prosecution.

Enclosed you will find:

Affidavits from Richard W. Madden, Sr., Lori M. Madden, Tiera R. Madden, Amanda K. Madden
Incident report from Abbeville County Sheriffs Department
Pictures of the mail received
Copies of the mail received
Statement from post master Glen Lunz
Statement from Sheila Vest

Thank you in advance for your attention to this matter. We look forward to hearing from you soon.

Sincerely,

/s/Richard W. Madden, Sr.
/s/Lori M. Madden
/s/Tiera R. Madden
/s/Amanda K. Madden